

TOWN OF KITTERY, MAINE
PLANNING BOARD MEETING
Council Chambers

APPROVED
March 14, 2013

Meeting called to order at 6:06 p.m.

Board Members Present: Deborah Driscoll, Tom Emerson, Susan Tuveson, Bob Melanson, Mark Alesse, Ann Grinnell, Rich Balano, Ann Grinnell

Members absent:

Staff: Gerry Mylroie, Town Planner

Pledge to the Flag

Minutes: February 28, 2013

Mr. Balano moved to accept the minutes as submitted

Ms. Tuveson seconded

Motion carries unanimously by all members present

Public Comment:

Public comment and opinion are welcome during this open session. However, comments and opinions related to development projects currently being reviewed by the Planning Board will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate.

Earldean Wells stated the CEO denied demolition and reconstruction of a barn and outbuilding on 11/20/12 next to a pond with wetlands around it, and the application subsequently appeared before the Board of Appeals on March 12, 2013. The findings said the existing building was zero feet from the wetlands and should have been 100 feet, and was in shoreland protection overlay. Why did this not come before the Planning Board? Mr. Mylroie stated the CEO replied to Ms. Wells and Board members in a memo dated March 11, 2013 explaining the basis for the decision. Mr. Emerson explained some issues are in the shoreland and affected by wetlands and this is a jurisdictional question. Mr. Mylroie explained the wetland was not in the shoreland area and the setback issue placed review with the Board of Appeals. Mr. Emerson stated he will discuss the decision process with the CEO and with the Chairman of the Board of Appeals.

There was no further public comment.

Ms. Grinnell joined the meeting.

ITEM 1 – Wallingford Square LLC – Modification to an Approved Plan.

Action: Hold a public hearing, review application, grant or deny preliminary/final approval or continue review. Wallingford Sq. LLC, owner and applicant, requests approval to amend the previously approved Site Plan to redevelop the former Masonic building and associated site located at 7-17 Wallingford Sq., Tax Map 4, Lot 106, Mixed Use Kittery Foreside Zone. Agent is Deane Rykerson, Rykerson Architecture.

Mr. Mylroie stated the staff felt the application was ready for approval pending a photometric plan condition.

Deane Rykerson, Rykerson Architecture, stated with the amount of ambient lighting at the site, a photometric plan would not be effective, and introduced Mr. Brearey.

David Brearey, Hill Road Lighting Design, explained the original lighting design was to provide minimal invasive lighting and determined LED lighting was the best use for this location. He presented an LED light demonstration showing how the lights are dimmable, waterproof, cost effective and minimize light pollution, noting the fixtures would light the front of the building only. Mr. Mylroie asked is it the applicant's intent to utilize CMP pole lights to illuminate the building? Mr. Rykerson explained the parking would be covered by a CMP light, but is not sure about the site lighting as they are not on the subject property. Mr. Mylroie stated the CMP site lights could be removed. Discussion followed regarding the lights on the CMP poles and whether there is sufficient ambient lighting in the public areas, and whether CMP poles could be used by the applicant for additional site lighting. Ms. Tuveson

summarized the applicant is proposing to use the existing ambient lighting with the supplemental LED lights on the building, and concurred that requiring a photometric study for the full site is burdensome, but if the parking area needs more light, a study may be warranted for that area. Ms. Driscoll suggested coordinating with CMP. Mr. Melanson suggested these discussions be included in the Findings.

There was no further discussion. The Public Hearing closed at 6:36 p.m.

Mr. Melanson moved to read the Findings of Fact
Ms. Grinnell seconded
Motion carries unanimously

WHEREAS: Wallingford Square LLC, owner and applicant of 7-17 Wallingford Square, proposed to redevelop the former Masonic building and associated site located on Tax Map 4, Lot 106, Mixed Use Kittery Foreside Zone. Agent is Deane Rykerson, Rykerson Architecture.

Hereinafter the "Development".

Pursuant to the Plan Review meetings conducted by the Planning Board as duly noted; and pursuant to the Project Application and Plan and other documents considered to be a part of the approval by the Planning Board in this finding consist of the following (Hereinafter the "Plan"), Deane Rykerson, Rykerson Architecture. (Or as noted):

- | | |
|--|----------|
| 1. Standard Boundary Survey | 3/2012 |
| 2. Demo Site Plan | 2/4/2013 |
| 3. Proposed Site Plan | 2/4/2013 |
| 4. Site Lighting | 2/4/2013 |
| 5. Architectural Floor Plans – A-1.1 thru A-1.5 | 2/4/2013 |
| 6. Architectural Elevation Plans – A-2.1 thru A-2.3 | 2/4/2013 |
| 7. Architectural Storefront Elevation Plans – A-3.1 thru A-3.2 | 2/4/2013 |

Now therefore, based on the entire record before the Planning Board as and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings as required by Section 16.10.8.3.4. and as recorded below:

FINDINGS OF FACT

Action by the board shall be based upon findings of fact which certify or waive compliance with all the required standards of this title, and which certify that the development satisfies the following requirements:	
A. Development Conforms to Local Ordinances. <i>The proposed development conforms to a duly adopted comprehensive plan as per adopted provisions in the Town Code, zoning ordinance, subdivision regulation or ordinance, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.</i>	
	Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
B. Freshwater Wetlands Identified.	
Not applicable. No wetlands on site.	
	Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
C. River, Stream or Brook Identified.	
Not applicable. None have been identified.	
	Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
D. Water Supply Sufficient.	
The applicant has received confirmation that sufficient municipal water is available.	
	Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
E. Municipal Water Supply Available.	
Municipal water is available and sufficient.	
	Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
F. Sewage Disposal Adequate.	

The applicant has received confirmation that municipal sewer is available and the project will not cause an unreasonable burden on municipal services.	
	Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
G. Municipal Solid Waste Disposal Available.	
The standard appears to be met. A dumpster is available on site for the disposal of solid waste.	
	Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
H. Water Body Quality and Shoreline Protected.	
Not applicable.	
	Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
I. Groundwater Protected.	
Not applicable. Site is serviced by public sewer	
	Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
J. Flood Areas Identified and Development Conditioned.	
Not applicable. Property is outside of the flood plain	
	Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
K. Stormwater Managed.	
The standard appears to be met. The proposed development does not incur any significant changes to current stormwater patterns and there is an overall reduction of impervious surfaces, aiding in stormwater management. The Town has an existing utility easement over the property that is anticipated to be maintained.	
	Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
L. Erosion Controlled.	
The standard appears to be met. The proposed development does not incur any significant earth moving and changes to current stormwater patterns and there is an overall reduction of impervious surfaces, aiding land's capacity to hold water.	
	Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
M. Traffic Managed.	
The standard appears to be met. A cross walk should be striped across the main vehicular entrance between sidewalk ramps. .	
	Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
N. Water and Air Pollution Minimized.	
1. The development is located outside of FEMA designated floodplains. 2 thru 6. These standards are not applicable to this development.	
	Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
O. Aesthetic, Cultural and Natural Values Protected.	
The standard appears to be met. The development does not appear to have a negative impact to the façade of the building.	
	Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
P. Developer Financially and Technically Capable.	
The standard appears to be met.	
	Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining

Now therefore the Kittery Planning Board adopts each of the foregoing Findings of Fact and based on these Findings determines the proposed Development will have no significant detrimental impact, and the Kittery Planning Board hereby grants Preliminary and Final Approval for the Development at the above referenced property, including any waivers granted or conditions as noted.

Waivers: None

Conditions: (All conditions must be included on the final plan prior to signature by the Planning Board Chairman)

1. The crosswalk across the main vehicular entrance between sidewalk ramps to be striped.
2. Any changes and modifications to the final plan, including lighting fixtures due to non-compliance, and will include a best effort on the part by the applicant, CMP, and Town Planning office to resolve this issue.

The Planning Board authorizes the Planning Board Chairman to sign the Final Plan and the Findings of Fact upon confirmation of compliance with any conditions of approval.

Approved by the Kittery Planning Board on March 14, 2013

Vote of 7 in favor 0 against 0 abstaining

Instructions/Notice to Applicant

1. One (1) mylar copy and two (2) paper copies of the recorded Plan and any and all related state/federal permits or legal documents that may be required, must be submitted to the Town Planning Department.
2. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with the permitting, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
3. State law requires all subdivision plans, and any plans receiving waivers or variances, be recorded at the York County Registry of Deeds within 90 days of the final approval.
4. Per Title 16.6.2.A - An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.
5. This approval by the Planning Board constitutes an agreement between the Town and the Developer, incorporating as elements the Development Plan and supporting documentation, the Planning Board Findings of Fact, and any Conditions of Approval.

Mr. Emerson suggested the Board further explore the CMP pole issue in future meetings and request CMP input as well.

OLD BUSINESS

ITEM 2 – Yankee Commons Mobile Home Park Expansion – Subdivision Plan Review.

Action: Review progress, consider request to continue application. Stephen A. Hynes, Trustee, owner, proposes to expand the adjacent Yankee Commons Mobile Home Park to create 79 sites on 50 acres. Property is located off Idlewood Lane/U.S. Route 1, Map 66 Lots 24, Mixed Use (MU) Zone. Agent is Tom Harmon, PE, Civil Consultants.

Gary Beers summarized the deferral of this application was due to the need for a CEO ruling regarding mineral extraction on the proposed site. On December 13, 2012 the Planning Board granted a 90 day extension pending the CEO's ruling. The ruling was made on January 23, 2013 and the applicant is appealing that decision through the Board of Appeals, scheduled for March 26, 2013. Mr. Beers referenced Title 16.10.7.1.3.A *Uncounted Time*. *When an approved plan is required to be reviewed/approved by another agency (e.g., DEP, BOA, KPA) any period the plan is at such an agency or that a plan is continued by the Planning Board in accordance with Section 16.10.5.4.1C from time of submission to time of decision inclusive, verifiable by recorded documentation, is not counted as part of the cumulative time periods described in this Section.* He suggested the Board could grant a 90 day continuance, grant a continuance contingent upon completion of the process with these other agencies, or allow this provision to prevail and the applicant will return the Planning Board when external review is completed, noting they have 45-days to appeal a negative decision by the Board of Appeals.

Mr. Beers noted the uncounted time began on September 13, 2012 when the Board deferred review of the application to the CEO for a ruling. Discussion followed regarding separate review impacting uncounted review time, and concurred that the application remains under the Uncounted Time provision, and a formal extension and Board action at this time is not required.

ITEM 3 – Lewis Farm II – Residential Cluster Subdivision – Final Plan Review.

Action: review final plan application, grant or deny final approval or continue review. Lewis Farm, LLC, owner, proposes 17 cluster residential lots on 78.5 acres, the final phase of the Lewis Farm Conservancy development. Property is located off Lewis Road, Map 61, Lots 25 and 29 in the Residential – Rural Zone. The owner's agent is Jeff Clifford, PE, Altus Engineering.

Mr. Mylroie noted there are six issues remaining to be addressed prior to final approval, including:

1. Pedestrian paths rather than sidewalks parallel with the road to get to the bus stop;
2. School bus pick-up area at least 15 feet by 15 feet along Lewis Farm Road; crosswalk across road;
3. Pedestrian way easement 15 feet wide along Lewis Farm Road frontage;
4. Access to Town Forest. If a proposed easement is accepted by the Board, Council would have to ultimately approve the easement.
5. Wetland Mitigation application and/or fee, or whether the open space meets the wetland mitigation requirements.
6. Status of the reserve area at the north end of the property. Staff believes this area is the 18th lot and part of the existing cluster subdivision, and access cannot be from an existing road.

He also noted a letter received from residents of Lewis Farm I requesting a bond for final road improvements be included in the Lewis Farm II performance bond.

Jeff Clifford summarized the three components of the Lewis Farm development, with Phase I consisting of 40 lots, approved in 2004, Phase III consisting of 5 lots, and this final phase. This proposed 17-lot development includes open space and wetland buffer easements, and received preliminary approval on March 8, 2012. In the interim the applicant submitted a LOMR to FEMA that was not effective until November 23, 2012. The project received an extension to March 23, 2013. He addressed the six items:

1. Pedestrian paths – similar design as approved in Phase I and an integral part of the conservation design, and have been on the plan since submittal.
2. School bus pick-up – There is a parking lot and pick-up area on Lewis Farm Road and he does not anticipate any problem in providing for a cross-walk, pending DPW review.
3. Pedestrian easement – There are steep slopes along Lewis Farm Road and the proposed locations for the easement are separated by privately owned property where an easement would be unlikely.
4. Access to Town Forest and Reserved Area – The reserve area is the remainder of the property after the cluster subdivision was created. Under the old ordinance this is permitted, and this application remains under review under the old ordinance, prior to the new cluster development language. The remainder lot is a conforming lot. Regarding the access to Town Forest, a final easement agreement has not been established, but the owner offers to permit access at this time. Note 14 on Sheet C-2 states: *Dedication by deed of the proposed conditional public access easement shown hereon by Lewis Farm, LLC and subsequent acceptance by the Town of Kittery is anticipated in the future, but is not a condition of subdivision approval*, and Mr. Clifford noted the minutes of March 8, 2012 reflect the same.
5. Wetland Mitigation – Under the prior cluster ordinance, only 8.25 acres of open space of which 2.43 acres of useable uplands would be required. This proposal has 50.65 acres of open space of which 25.91 acres are uplands. This increased common open space and reduced build out of what could be allowed is offered as mitigation. He further argued the open space has value, and could have been carved out and sold separately.

Mr. Melanson noted the impacted wetlands area totaled 5,833 square feet with fees totaling \$23,332 and the applicant is requesting these fees be waived or off-set in lieu of the generous open space provided. Mr. Clifford concurred. He also noted the applicant offered to contribute 5 acres adjoining the Town Forest. Discussion followed regarding the remainder parcel and access to Town Forest. The parcel is part of the parent parcel, but not part of the subdivision, and was not included in the density and open space calculations. The owner is retaining ownership of this parcel as a separate lot. The access is part of the remainder parcel, with public use by permission of the owner. Discussion followed regarding the proposed 15-foot easement along Lewis Road. Board members felt because Lewis Farm I private property separated the proposed easements, requiring easements on Lewis Farm II at this time was not rational. Mr. Emerson asked for a stop

sign or pedestrian sign at the potential cross walk across Lewis Road. Mr. Clifford noted access via Dahlia Drive and Ladyslipper Lane would have to be along the road's shoulders as there is a 50-foot right-of-way and drainage ditches, precluding sidewalks and paths. Mr. Melanson noted in the Clover Landing approval the Board split mitigation fees and open space. However, in this case the Board needs to provide the applicant direction.

Mr. Emerson asked the Board to review each item and determine their opinions:

1. Pedestrian paths rather than sidewalks parallel with the road to get to the bus stop.
Board concurred this was acceptable.
2. School bus pick-up area at least 15 feet by 15 feet along Lewis Farm Road.
The Board concurred this item be removed, as residents can utilize the existing bus stop area in Lewis Farm I. Mr. Johnson [owner] explained each Lewis Farm development is distinct, but under the same master Homeowner's Association. All paths and existing amenities can be used by all residents of the Lewis Farm development.
3. Pedestrian way easement 15 feet wide along Lewis Road frontage. Following discussion, Board members concurred there is no feasible connectivity along the Phase I property to the two short pieces of Phase II. It was noted there is approximately 12 feet on either side of Lewis Road. A consensus vote was 1 in favor and 6 opposed to requiring a 15 foot easement along Lewis Road frontage.
4. Access to Town Forest. If a proposed easement is accepted by the Board, Council would have to ultimately approve the easement [see discussion on Item 6].
5. Wetland Mitigation application and/or fee, or whether the open space meets the wetland mitigation requirements. Mr. Melanson summarized the arrangement the Board made regarding wetland mitigation fees with Clover Landing as an eleventh hour agreement. This is different because the applicant submitted a mitigation plan prior to receiving preliminary approval. A portion from the March 8, 2012 minutes was read: *Mr. Clifford noted the preservation of the wetlands as open space prevents timber harvesting as allowed, and this preservation offsets potential mitigation fees. Mr. Emerson noted the land in lieu of fee appears to be appropriate in this case.* Discussion followed as to whether the Board should forward to Council the offer of 5 acres attached to the Town Forest. Earledean Wells suggested these acres are sensitive and may be better protected as part of the subdivision covenants than open to public access within the Town Forest. Mr. Alesse noted the applicant has provided far more open space than is required by ordinance. Mr. Johnson stated he'd like to financially support conservation education efforts. The Board agreed to waive any mitigation fee based on the generous 50 acres already included in the subdivision's open space plan.
6. Status of the reserve area at the north end of the property. Mr. Clifford stated the parcel has its own title, and under the old ordinance can be separated from the mother parcel. The parcel will remain conforming even if an easement is ultimately created. Mr. Johnson explained they agreed to provide access, but an easement has not been legally created as he is concerned about future use by the public riding horses or carrying guns into the Town Forest. Mr. Mylroie suggested the following condition language: *Dedication by deed of the proposed public access easement shown hereon by Lewis Farm, LLC will be approved by the Planner and the Town Attorney and recorded with the County Registry of Deeds prior to the issuance of an occupancy permit for the first dwelling unit if the easement is accepted by the Kittery Town Council or their designated trustee.* Ms. Grinnell noted there is an existing entrance to the Town Forest. Mr. Emerson suggested the access is part of the remainder lot and easement language may be pursued at the time of that parcel's development. Mr. Johnson asked this remain identified as 'access'. The Board concurred the parcel issue be removed from approval consideration, and there be no condition language regarding an easement on said parcel, but that Item 14 on Sheet C-2 be retained.

Ms. Tuveson moved to delay the reading of the Lewis Farm 2 Findings of Fact to the end of the meeting.

Ms. Grinnell seconded

Motion carries unanimously

The Board agreed to proceed to Item 8 due to the number of people in the audience waiting to hear this item.

[10:18 p.m. – continuance of Item 3]

Ms. Tuveson moved to approve the Lewis Farm II residential cluster subdivision

Ms. Grinnell seconded

Motion carries unanimously

WHEREAS: Lewis Farm LLC, owner and applicant of Lewis Farm Subdivision-Phase II, proposed to develop the property along Lewis Road as shown on the Town Tax Map 61 Lot 25 & 29, located in the Residential Rural Zone. Agent is Jeff Clifford, Altus Engineering, Inc. Hereinafter the “Development”.

Pursuant to the Plan Review meetings conducted by the Planning Board as duly noted; and pursuant to the Project Application and Plan and other documents considered to be a part of the approval by the Planning Board in this finding consist of the following (Hereinafter the “Plan”), prepared by . Altus Engineering, Inc (or as noted):

8. Subdivision Plan Set entitled

Lewis Farm Subdivision- Phase II, Map 61 Lots 25 & 29, Lewis Road, Kittery, Maine Issue Date: 2/18/2013

NOW THEREFORE, based on the entire record before the Planning Board as and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings as required by Section 16.10.8.3.4. and as recorded below:

FINDINGS OF FACT

Action by the board shall be based upon findings of fact which certify or waive compliance with all the required standards of this title, and which certify that the development satisfies the following requirements:
A. Development Conforms to Local Ordinances.
Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
B. Freshwater Wetlands Identified.
Wetlands are shown.
Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
C. River, Stream or Brook Identified.
Not applicable.
Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
D. Water Supply Sufficient.
Private wells proposed for each lot. Existing cistern on Dahlia Drive to be used for fire protection.
Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
E. Municipal Water Supply Available.
Private wells proposed for each lot. Not applicable.
Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
F. Sewage Disposal Adequate.
Individual sewage disposal systems proposed.
Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
G. Municipal Solid Waste Disposal Available.
The subdivision does not require any changes to municipal solid waste service.
Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
H. Water Body Quality and Shoreline Protected.
Portions of the development are located within 250 feet of wetlands but the development should not adversely affect the quality of the water body.
Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
I. Groundwater Protected.
The proposed development should not adversely affect the quality or quantity of groundwater (See MeDEP SLOD license).
Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
J. Flood Areas Identified and Development Conditioned.
Per CMA Engineers: In the first review (September 18, 2006) of the Lewis Farm Subdivision Phase II and III, it was

noted that the 1985 FEMA floodplain maps showed that a number of proposed lots and portions of what is now called Ladyslipper Lane and Orchard Lane were located within the 100-year floodplain. This is not allowed in the Kittery Ordinance. The applicant noted that the 1985 FEMA flood levels were likely incorrect, and it was recommended that the applicant provide additional/new documentation of the floodplain relative to actual flood elevations or apply for a waiver to permit filling in the floodplain.

The applicant has provided a Letter of Map Revision (LOMR) for the Town of Kittery Flood Insurance Study Report and Flood Insurance Rate Map by Federal Emergency Management Agency (FEMA) dated July 3, 2012. (The applicant pursued this revision based on updated information and documentation with FEMA and the Town). The LOMR modifies the limit of the 100-year flood plain in this area. The design includes no filling or development within the revised 100-yr floodplain, and therefore complies with the Kittery ordinance.

Vote of 7 in favor 0 against 0 abstaining

K. Stormwater Managed.

Per CMA Engineers: Stormwater management on-site is accomplished through the use of culverts, rip rap, swales, level spreaders and road ditch turnouts with an emphasis on maintaining sheet flow and minimizing concentrated flow.

The project has also obtained a Site Location of Development License from Maine DEP for the project. A copy of the license is included in the subdivision application. That permits process included comprehensive review of stormwater management. We believe that the ME DEP review was complete and comprehensive.

Vote of 7 in favor 0 against 0 abstaining

L. Erosion Controlled.

Runoff is primarily maintained as sheet flow and minimized as concentrated flow. Other best management practices include the use of undisturbed wooded buffers, reduction of flow velocities, rip rap protection, minimization of pavement widths and use of loam and gravel mixture in shoulders for increased infiltration.

Vote of 7 in favor 0 against 0 abstaining

M. Traffic Managed.

1. The Applicant has provided a Traffic Generator Summary for the access roadway off of Lewis Road (Dahlia Drive) and the number of ADT (peak hour and peak day) is appropriate for Lewis Road.
2. Both Orchard Lane and Ladyslipper Lane are cul-de-sacs. Applewood Way is a private drive.

Vote of 7 in favor 0 against 0 abstaining

N. Water and Air Pollution Minimized.

1. No filling or development is proposed with the 100 year floodplain
2. Applicant has provided a Class A High Intensity Soil Survey, test pit logs, proposed subsurface disposal area locations and reserve locations.
3. Slopes across the site range from level to 25%. Sheet flow was maintained to the extent possible to discourage concentrated flow.
4. There are no streams on site. Not applicable.
5. The Applicant has received a MDEP Site Location of Development License and an Army Corps of Engineers Permit.
6. No hazardous materials anticipated. Not applicable.

Vote of 7 in favor 0 against 0 abstaining

O. Aesthetic, Cultural and Natural Values Protected.

The proposed development is maintaining 58+ acres of protected open space. No development is proposed within 100' of one of the significant vernal pools on site (#4) or within over 500' of vernal pool #1. The applicant provided a "Wetland Delineation & Functional Assessment Report Including Vernal Pool Study Rare Plant Survey Wildlife & Fisheries Review" (Report). The Report states that during a rare plant survey conducted by "no rare threatened, endangered or plants of special concern were observed" and "no exemplary natural communities were noted" in the areas of proposed development. The Report also states that the parcel contains a Deer Wintering Area and that a review of Phase II was conducted by The Maine Department of Inland Fisheries & Wildlife-their letter of concern and the list of wildlife noted during fieldwork appear to be missing from the appendix of the report. The Report concludes that numerous steps can be taken to compensate for loss of deer wintering yard including planting a dense softwood stand on the upland island, removing a dilapidated tree house and blocking the woods road that provides access to the island.

Vote of 7 in favor 0 against 0 abstaining

P. Developer Financially and Technically Capable.

The standard appears to be met.

Vote of 7 in favor 0 against 0 abstaining

WETLAND ALTERATION FINDINGS OF FACT: A wetlands application has been prepared and submitted to the Town. The application appears to meet the requirements of the ordinance. The applicant makes the case for meeting the requirements of 16.9.3.9 (Mitigation Plan), including the wetlands preserved. <i>CMA, January, 2012</i>
<i>16.9.3.7 Wetlands Alteration Approval Criteria</i>
<i>A. In making the final determination as to whether a wetland application should be approved, the Planning Board will consider existing wetland destruction and the cumulative effect of reasonably anticipated future uses similar to the one proposed.</i>
The applicant is proposing two wetland crossings to access upland areas. The applicant has located the roadways at existing disturbed areas (existing woods roads), reduced the shoulder width and used a 1.5:1 side slope to minimize impacts to the wetlands.
Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
<i>B. It is the responsibility and burden of the applicant to show that the proposed use meets the purposes of this Code and the specific standards listed below to gain Planning Board approval to alter a wetland. The Planning Board will not approve a wetlands alteration unless the applicant provides clear and convincing evidence of compliance with the Code.</i>
Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
<i>C. In evaluating the proposed activity, the Planning Board may need to acquire expert advisory opinions. The applicant must be notified in writing, by the Town Planner at the Planning Board's request, that the applicant will bear the expenses incurred for the expert persons or agencies. The Planning Board will consider the advisory opinion, including any recommendations and conditions, provided by the Conservation Commission.</i>
The proposed activity has been reviewed by CMA Engineers.
Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
<i>D. When the Planning Board finds the demonstrated public benefits of the project as proposed, or modified, clearly outweigh the detrimental environmental impacts, the Planning Board may approve such development, but not prior to granting approval of a reasonable and practicable mitigation plan, (see Section 16.9.3.9) and not prior to the completion of all performance guaranties for the project, (see Section 16.10.8.2.2).</i>
The applicant is proposing to designate more land as protected common open space than required by the Ordinances (an additional 50.64 acres with 25.91 acres upland) that will abut protected woodland tracts on adjacent properties) Town Farm Forest and Clover Landing). See Wetland Mitigation Narrative. Applicant states 5,833 sf (0.13 acres) of wetlands will be impacted and the wetland mitigation narrative offers mitigation in lieu of fees.
Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
<i>E. The applicant must submit applicable documentation that demonstrates there is no practicable alternative to the proposed alteration of the wetland.</i>
<ol style="list-style-type: none">1. The proposed wetlands crossings are located at existing disturbed areas on woodland roads.2. The proposed wetland crossings have reduced shoulder widths and steeper side slopes for the roadway embankments.3. The proposed development is a cluster development and crossings have reduced shoulder widths and steeper side slopes for the roadway embankments.4. Several best management practices are used on site and an emphasis towards maintaining sheet flow and minimizing concentrated flow is also used.
Vote of <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
<i>F. In determining if the proposed development plan affects no more wetland than is necessary the Planning Board will consider if the alternatives discussed above in subsection A of this section accomplish the following project objectives: The proposed use will not:</i>
<ol style="list-style-type: none">1. Unreasonably impair or diminish the wetland's existing capacity to absorb, store, and slowly release stormwater and surface water runoff;2. Unreasonably increase the flow of surface waters through the wetland;3. Result in a measurable increase in the discharge of surface waters from the wetland;4. Unreasonably impair or diminish the wetland's capacity for retention and absorption of silt, organic matter, and nutrients;5. Result in an unreasonable loss of important feeding, nesting, breeding or wintering habitat for wildlife or aquatic life; all crossings must be designed to provide a moist soil bed in culvert inverts and to not significantly impede the natural migration of wildlife across the filled area;6. Result in a measurable increase of the existing seasonal temperature of surface waters in the wetland or surface waters discharged from the wetlands.

7. <i>Result in a measurable alteration or destruction of a vernal pool.</i>
<ol style="list-style-type: none">1. The wetland's capacity to absorb, store and slowly release stormwater and surface water runoff should not be affected by the proposed development.2. Flow of surface waters through the wetland should not be unreasonably increased.3. There should be no measurable increase in discharge of surface waters from the wetland4. The wetland's capacity to retain and absorb silt, organic matter and nutrients should not be unreasonably impaired or diminished.5. The proposed development may result in a loss of important wintering habitat for wildlife. The Report provided by the applicant has concluded that numerous steps can be taken to compensate for loss of deer wintering yard including planting a dense softwood stand on the upland island, removing a dilapidated tree house and blocking the woods road that provides access to the island.6. The proposed development should not result in a measurable increase of seasonal temperatures of surface waters in or discharged from the wetlands.7. The proposed development may result in some alteration to the vernal pools although all construction is located outside of a 100' radius of pools. According to the Report provided by the applicant minimizing impacts to the vernal pools can be accomplished by preventing cutting near buffers, increasing buffer areas, educating owners about not placing debris in wetlands, watching roadways for migration time and avoiding rutting during construction.
Vote of <u>7</u> in favor <u>1</u> against (Tuveson) <u>0</u> abstaining

NOW THEREFORE the Kittery Planning Board adopts each of the foregoing Findings of Fact and based on these Findings determines the proposed Development will have no significant detrimental impact, and the Kittery Planning Board hereby grants Preliminary and Final Approval for the Development at the above referenced property, including any waivers granted or conditions as noted.

Waivers:

Sec. 16.8.5.1.3.A & B Allow drawing scale 1"=50' horizontal and 1"=5' vertical for plan and profile sheets.

Article XI, Dimensional Modifications:

Sec 16.3.2.1.D2 – Minimum Lot Area

Sec 16.3.2.1.D2 – Minimum Street Frontage

Sec 16.8.4.14 (b)(5) – Roadway Embankment

Sec 15.8.4 Article 1V (a) – R.O.W. Width

Sec 15.8.4 Article 1V (a) – Pavement Width

Sec 15.8.4 Article 1V (a) – Sidewalk

Sec 15.8.4 Article 1V (a) – Paved Shoulder

Sec 15.8.4 Article 1V (a) – Cul-de-sac Length

Conditions: (All conditions must be included on the final plan prior to signature by the Planning Board Chairman)

1. Final Plan must include notes that reflect adherence to the Maine DEP *Best Management Practices* for all work associated with site and building renovations to ensure adequate erosion control and slope stabilization.
2. The developer and Contractor(s) shall adhere to the Best Management Practices documented in the Stormwater Management and Site Plan for this site.
3. Vegetation within the Shoreland Overlay Zone to be managed in accordance with shoreland overlay zone requirements. 100 feet shoreland setback to be clearly signed with appropriate Town of Kittery placards.
4. Prior to the commencement of grading and/or construction within a building envelope, as shown on the Plan, the owner and/or developer must stake all corners of the envelope. These markers must remain in place until the Code Enforcement Officer determines construction is completed and there is no danger of damage to areas that are, per Planning Board approval, to remain undisturbed.

The Planning Board authorizes the Planning Board Chairman to sign the Final Plan and the Findings of Fact upon confirmation of compliance with any conditions of approval.

Approved by the Kittery Planning Board on March 14, 2013

Vote of 7 in favor 0 against 0 abstaining

An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered. See Title 16.6.2.A.

Break

ITEM 4 – Board Member Items: Comments and Discussion (No Discussion)

ITEM 5 – Town Planner Items (No Discussion)

- A. Kittery Foreside Plan;
- B. Comprehensive Plan Update (Housing, Economy, Land Use, Transportation);
- C. *Creative Kittery Opportunities* Public Meeting on March 16, 2013; and
- D. Other

NEW BUSINESS

ITEM 6 – Estes Bulk Propane Storage/U.S. Route 1 – Sketch Plan.

Action: After listening and commenting on introductory presentation, schedule a site walk. Owner M&T Reality and applicant Estes Oil & Propane Company is requesting consideration of their plans for a 60,000 gallon bulk propane storage facility at their property south of 506 U.S. Route One., Tax Map 67, Lot 4, Mixed Use Zone, with a portion in the Residential Rural and Shoreland Overlay zones. Agent is Joe Cheever, ATTAR Engineering.

Joe Cheever introduced Mike Estes, owner of the parcel. Mr. Cheever summarized the proposal, noting the parcel is in the shoreland and mixed-use zones. The proposed road is 1,400 feet with a wetland crossing and wetland impact of 12,355 s.f. Approximately once per week, bulk propane would be delivered via 12,000 gallon trucks to the two proposed 30,000 gallon storage tanks on site. During heating season, propane delivery trucks would enter the site to fill their trucks and deliver to residential users. Fire protection will be needed, including a water line and hydrant. A standard hammerhead is included on the sketch plan. No trucks will be kept on site; they are not proposing a gate across the road. Mr. Estes noted the area will have to be fenced around the tanks to meet state and federal regulations. Mr. Emerson advised the fence will have to be included on the plan. The propane pad is approximately 45 feet x 45 feet. Mr. Melanson asked if the site is accessible for a site walk. Mr. Cheever suggested they could access the site via the Take Flight parcel [Mr. Cheever will obtain permission from the owner of the adjacent parcel prior to the site walk]. Ms. Wells stated this is the third time this property has been before the Board and the wetland crossing needs to be carefully observed. Mr. Emerson reminded the applicant the Fire Chief and DPW will need to review.

Mr. Melanson moved to accept the sketch plan and schedule a site walk

Ms. Grinnell seconded

Motion carries unanimously

A site walk was scheduled for Wednesday, April 10, 2013 at 6:15 p.m. Mr. Cheever will flag the wetland crossing, road and storage tank location.

ITEM 7 – Desjardins/Old Post Road New Dwelling – Modification to an Approved Plan

Action: Accept or deny plan application and schedule a public hearing. Michael Desjardins, owner and applicant, requests approval to construct a single dwelling-unit within a new second story addition to the existing single story office building. The property, located in the Business Local zone, Map 14, Lot 15, is proposed to be brought in compliance with street trees and buffer planting requirements that were not enacted at the time of the 2003 approval.

Mike Desjardins offered to answer any Board questions. There were none. Mr. Mylroie stated this is not a sketch plan, but a modification of a prior plan, reducing the proposed two-unit apartment to one apartment.

Ms. Grinnell moved to approve the modified plan and schedule a site walk.

Ms. Tuveson seconded

Motion carries unanimously

A site walk was scheduled for Tuesday, April 2, 2013 at 6:00 p.m.

Mr. Balano moved to extend the meeting to 10:30 p.m.

Mr. Melanson seconded

Motion carries unanimously

ITEM 8 – Harbor St. L.P./Cluster Subdivision off Brave Boat Harbor Road – Sketch Plan.

Action: After listening and commenting on introductory presentation, schedule a site walk. Owner Acadia Trust, N.A., and applicant Harbor Street LP, is requesting consideration of their plans for a 40-lot subdivision a 59.8 acre parcel off Brave Boat Harbor Rd., Tax Map 69, Lot 6, Residential-Rural, with and Shoreland Overlay zones. Agent is Jeff Clifford, Altus Engineering, Inc.

[This item was viewed out of order due to the large number of concerned individuals present in the audience wishing to hear the presentation.]

Mr. Emerson explained this is not a public hearing for public commentary, but a sketch plan review presentation whereby the Board is first presented with the project proposal, but that a public hearing would be held during the review process.

Mr. Clifford summarized the proposal, and how the open space and density calculations were developed.

The common open space surrounds the proposed lot areas and includes large amounts of uplands as well as wetland areas. Maximum density would allow for 44 units, but they are proposing a 40-lot project. The uplands can be used in the density calculations. He summarized the proposed roadway system, walking paths and their locations within the open space areas, while avoiding the stream, and an increased 250-foot buffer from emergent wetlands. Development calculations include 32.7 acres of open space (50% of total lot), where 29.9 acres are required; and 23.5 acres of upland open space (30% of net residential acreage) where 12.12 acres are required. Homeowners Association documents and covenants will be provided for roadway, open space, and buffer maintenance and protection, which provides for wildlife and stormwater management. A Site Location of Development review and permit is required through the DEP, which includes stormwater design review. He explained the location of the entrance to the project is directly across from Salt Marsh Lane because site lines are the best at this location and car lights will project onto another roadway instead of house lots. The applicant is proposing individual septic systems as a shared systems increase chances of failure. Individual wells are proposed as well.

Board discussion:

Ms. Driscoll: What about deer wintering areas?

Agent response: State maps did not indicate this area as a deer wintering area, and a letter has been submitted to State Wildlife regarding the plan.

Mr. Melanson: Phasing? Lot and home prices?

Agent response: Phasing has not been discussed with the applicant as yet. Mr. Falzone stated the estimated prices would be \$300-\$400,000 each.

Ms. Grinnell: Contiguous open space is not apparent.

Agent response: Ordinance requires open space near stream area, which is provided for in this design. The new ordinance has been followed. There is only 9 acres of wetland on a 59 acre lot, providing 50 acres of upland.

Mr. Alesse: Why so many lots in such a rural area? It appears to be a dramatic impact for this area, not the historical slow, one-house-at-a-time development.

Agent response: There are very few parcels in Kittery of this size with so much upland area. Lewis Farm was a 200 acre parcel. One-acre parcels under a standard subdivision would yield more lots than proposed in the cluster conservation approach.

Mr. Emerson: This is 20% of the 200 units per decade the town has developed. He would like to see a phasing plan as he is unsure the market can absorb this without one.

Earle Dean Wells: A soils scientist on the Conservation Commission noted studies indicate the soils in this area are poor and may not support the number of septic systems proposed. An abutter, the Calimars, asked their property be included in the site walk since runoff from this property enters their property.

Mr. Emerson noted given the hour, and the fact the Board has not seen the property, it would be more appropriate to take public inquiries at the official public hearing that will be scheduled at a later date.

Mr. Melanson moved to approve the sketch plan as substantially complete and schedule a site walk.

Ms. Tuveson seconded

Discussion: Mr. Alesse asked if it is considered substantially complete without the deer wintering grounds. Mr. Emerson stated they have given the applicant further direction regarding this issue. Ms. Grinnell stated this does not appear to her to be what the cluster ordinance directs and does not want to accept the plan as it is. Mr. Melanson explained this is at the sketch plan stage only, and acceptance allows for further Board review and discussion. Mr. Emerson stated this is a paperwork check, and allows the applicant to move forward. The Board does not have to ultimately approve the final product if it does not meet ordinance standards. Mr. Balano concurred, as there are Findings of Fact that identify the final approval requirements, but the Board needs to follow ordinance review direction. Mr. Alesse stated he believes more work is needed prior to a site walk to identify habitat, stream area, and contiguous areas. Mr. Emerson explained there needs to be statutory direction to reject or delay a project. Ms. Tuveson noted the Board must have a fact-based reason to deny a project, not just because 'you don't like it'. Mr. Balano concurred. Mr. Melanson asked about site conditions for a site walk. Mr. Clifford stated the site has been staked for lot locations, test pits, and an access road is available. Ms. Wells stated an alternate date should be secured in case there is snow on the ground. Ms. Grinnell asked about the road length and why a sketch plan would be moved forward if the road length does not meet code. Why should the applicant spend the money and the Board spend the time if, at the beginning of the project, the road is too long? Mr. Emerson stated this is addressed during preliminary plan review and the Board may choose not to waive that requirement. Mr. Mylroie suggested the Board 'receive' the sketch plan, rather than finding it complete, and schedule a site walk. Following the site walk the Board can direct the applicant further while still at the sketch plan review stage prior to preliminary plan review. Mr. Alesse asked if it wouldn't be better to schedule a site walk in the spring where the stream and vernal pools can be better observed.

Mr. Melanson moved to amend his prior motion and 'receive the application' and schedule a site walk

Ms. Tuveson seconded

Motion carries with 4 in favor; 3 against (Grinnell, Alesse, Driscoll); 0 abstaining

A site walk was scheduled for March 27, 2013 at 8:00 a.m.

Brenda Payne, 182 Brave Boat Harbor Road, offered her property for site walk participants to park.

ITEM 9 – Pearson Meadows Cluster Subdivision off Wilson Road – Sketch Plan.

Action: After listening and commenting on introductory presentation, schedule a site walk. Owner Gail Beverly Burns and applicant Chinburg Builders, Inc, is requesting consideration of their plans for a 10-lot subdivision a 12.5 acre parcel off Wilson Road. Tax Map 54, Lot 14, Residential-Rural, with and Shoreland Overlay zones. Agent is Jeff Clifford, Altus Engineering, Inc.

Jeff Clifford noted the parcel has been in Pearson family since the 1950's. The total parcel is 24.5 acres. The original house lot has been included in the density and open space calculations. The analysis would allow 14 units, more than the 10 units proposed. A crossing is proposed to access the site, impacting approximately 3,340 s.f. of wetlands. A vernal pool identified north of the existing residence has been assessed as not significant by the State, though the Army Corps of Engineers has requested the cleared area of the roadway be kept a minimum of 100 feet from the vernal pool. A Tier 1 permit to the DEP has been submitted and an confirmed approval is pending. An open bottom culvert will be installed to allow passage of wetland area species. Underground utilities are proposed, with individual septic systems and wells for domestic water. The proposed roadway is 1,100 feet. Potential access through Devon Woods was not accepted by their Association. The applicant and owner would prefer not to have walkways along the proposed road. Screening of abutting properties can be accommodated. Rather than wooded buffers, detention basins are proposed [in the southwest corner of the upland area].

Mr. Alesse asked if open space and wetlands must be contiguous and unfragmented? [The ordinance states: *creation of a network of contiguous open spaces or greenways by linking the common open spaces within the site and to open space on adjoining lands wherever possible and Open space should be a contiguous form of unfragmented land to protect natural resources, including plant and wildlife habitats.*]

Mr. Balano moved to receive the sketch plan and schedule a site walk

Ms. Tuveson seconded

There was no discussion

Motion carries unanimously

A site walk was scheduled for Tuesday, April 16 at 6:00 p.m. (60 Wilson Road)

The Kittery Planning Board meeting of March 14, 2013 adjourned by rule at 10:30 p.m.

Submitted by Jan Fisk, Recorder – March 18, 2013